

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Review of Regulatory Requirements for	)	CC Docket No. 01-337
Incumbent LEC Broadband	)	
Telecommunications Services	)	

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**COMMENTS OF THE ALASKA COMMUNICATIONS SYSTEMS  
AFFILIATED LOCAL EXCHANGE COMPANIES**

ACS of Anchorage, Inc. (“ACS-ANC”), ACS of Fairbanks, Inc. (“ACS-F”), ACS of Alaska, Inc. (“ACS-AK”), and ACS of the Northland, Inc. (“ACS-N”), hereinafter collectively referred to as “ACS”, submit the following comments in response to the Federal Communications Commission (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”) issued in the above-captioned matter.

**I. Introduction & Summary**

The Commission released its NPRM to consider issues related to the current and future deployment of, and proper regulatory treatment for, local exchange carrier (“LEC”) broadband telecommunications services. As detailed in these comments, ACS strongly recommends a deregulatory approach to current and future incumbent LEC (“ILEC”) broadband services. ACS also supports the creation of a clear and consistent national policy with regard to broadband services. To that end, the Commission should exercise its authority to establish a regulatory framework recognized in all fifty states that rewards broadband investment, fosters widespread utilization of existing broadband applications, and encourages the development of new technologies and innovative services. Specifically, ACS urges the Commission to deregulate competitive broadband services or, at

a minimum, adopt a process whereby LECs facing real loss of market share may expeditiously obtain relief from dominant carrier regulation.

## **II. Profile of the ACS Affiliated LECs**

The ACS affiliated LECs that join together in these comments present a contrast in superlatives. Their local exchange service areas run the gamut from Anchorage, which is one of the most, if not *the* most, competitive local exchange markets in the country, to the rural Alaska markets, which are some of the most remote and geographically challenging markets in America.

The Anchorage local market became competitive almost immediately following enactment of the Telecommunications Act of 1996. Anchorage enjoys facilities-based competition from multiple providers.<sup>1</sup> Virtually every Anchorage customer, business and residential, has a choice of facilities-based providers. At the moment, the ACS ILEC serving Anchorage holds less than 60% market share.

After terminating the Section 251(f) exemptions held by ACS in several rural locations, the Regulatory Commission of Alaska (“RCA”), approved interconnection agreements and CLEC certification applications for Fairbanks and Juneau. Competition in these markets is rapidly growing, and soon will include full facilities-based competition similar to that available in Anchorage.

ACS recently received a request for interconnection in all of the exchanges of one of its two smallest (based on size of exchange) study areas. The RCA has confirmed that

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<sup>1</sup> Three CLECs have already been certificated to serve Anchorage, and multiple applications for local certification are pending at the state commission. In addition, one uncertificated wireless CLEC has offered fixed local service in the past.

its previous order terminating the ACS rural exemptions applies to these markets as well. Facilities-based competition in these much smaller communities is anticipated in 2003.

### **III. Recommendations**

ACS offers the following recommendations:

- In light of extensive of inter- and intra-modal broadband competition, at least in ACS's markets, the Commission is justified in adopting a policy of deregulation of LEC broadband services.
- However, if the Commission believes that some level of oversight of all broadband services is, for now, still needed, ACS endorses the approach of treating LEC broadband offerings as non-dominant services.

In addition to the recommendations noted above, ACS also urges the Commission to consider the following:

- Even if the Commission decides not to grant non-dominant treatment of all ILEC broadband services at this time, it should establish an *expedited* process for ILECs operating in highly competitive markets, like those served by ACS, to seek company-specific non-dominant findings.
- Finally, the Commission should take all reasonable steps to ensure that its broadband policies are implemented on a consistent and competitively neutral basis in all fifty states.

### **IV. Discussion**

#### **A. The State of Broadband Competition**

Like markets throughout the nation, Alaska now realizes the benefits of both inter-modal and intra-modal broadband competition. ACS's primary facilities-based CLEC competitor, General Communication, Inc. ("GCI"), is not only one of the largest long-distance carriers in the state, but also owns and manages virtually all of the cable television systems currently in operation in Alaska. GCI has already deployed bi-directional cable

modem technology for the delivery of both business and residential broadband services in many of its markets throughout Alaska. GCI also has announced that it is testing its cable facilities for provision of two-way local exchange and exchange access voice services.

AT&T Digital Broadband (“ADB”) deployed a wireless network in Anchorage for the delivery of both local exchange services and high-speed data transmission.<sup>2</sup> Alaska Power and Telephone Wireless has proposed a similar wireless broadband network for initial deployment in the community of Ketchikan, Alaska. Other inter-modal competition, including direct-to-home satellite services, is being deployed in Alaska as well, promising broadband solutions for the most remote areas.

Intra-modal broadband competition also has firmly taken hold in Alaska. To date, two competitors have secured interconnection agreements with ACS-ANC with specific emphasis on access to the high-frequency portion of the local loop. The intent of such access is obviously to deploy broadband services where, in this case, the competitive data-centric LEC (“DLEC”) uses a combination of its own facilities and the “last mile” customer access afforded by its interconnection with ACS-ANC. To the extent that the Commission continues to mandate such unbundled loop access, intra-modal broadband competition will be both feasible and an attractive option for DLECs.

#### B. Measuring Market Power

ACS agrees that, in considering the appropriate level of regulation of ILEC broadband services, the Commission should satisfy itself that ILECs will not be in a position to abuse market power. However, in a situation like the one found in Alaska, such abuse is impossible, and has been for some time. Where, as in Anchorage, Fairbanks, Juneau, and

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<sup>2</sup> ADB’s national business plan ultimately resulted in this network being turned down.

soon in many other smaller communities, every business and residential consumer has a choice of facilities-based LEC providers, there is little opportunity for the ILEC to achieve supra-competitive profits. In such a situation, the question of market share is really irrelevant. If the ILEC cannot control price or output, and thereby maximize its own profits, and cannot prevent future competitive entry, it no longer has market power.<sup>3</sup> Under these circumstances, regulatory relief, whether implemented generically to all broadband services, or on a more case-specific basis, is clearly the right policy call.

### C. Investment Incentives & The Problem With Unbundling

The Commission's concerns regarding broadband investment incentives are well-founded. ACS's experience may very well be on the extreme end of the continuum in terms of state commission pricing policies for unbundled network elements ("UNEs").<sup>4</sup> But the fact remains that no economically rational business will make investments that cannot be recovered. This reality is compounded by the fact that, for ILECs, such investments are often viewed as being made for the benefit of one's competitor. While there may have been some logic associated with a rule that mandates sharing legacy network facilities that were funded by regulated monopoly revenues, that logic fails when applied to new technologies and new construction. There is simply no good reason to impose such a requirement on prospective changes to the ILEC network. As long as such requirements exist, neither ILECs nor CLECs

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<sup>3</sup> Even if market share were a relevant consideration, ACS-ANC has lost more than 40% of the local market since 1997, comparable to what AT&T had lost when it was found to lack market power in the domestic interexchange market. *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, 3294 (1996).

<sup>4</sup> Based on its expressed disagreement with the judicial reasoning applied by the 8<sup>th</sup> Circuit Court of Appeals, the Alaska Commission continues to impose a "hypothetically efficient network" standard on its UNE pricing determinations. This has resulted in ACS LECs being forced to price UNEs well below the actual forward-looking cost of provisioning unbundled network elements.

will be motivated to make new investments. Providers lose. Consumers lose. And the goals of the Act are frustrated.

ACS believes that requiring ILECs to “share” their new broadband capabilities is no more justified than reciprocal access to new technologies provisioned over CATV or other (non-regulated) facilities. The Commission should allow all broadband providers to make independent decisions and implement their end-user strategies free of regulatory requirements that were designed for legacy networks or for a time that has come and gone.

#### D. National Policy Development

Perhaps one of the most challenging balances to achieve in this proceeding will be the one that brings the need for a clear national broadband policy face to face with the desires of states to craft more targeted solutions. Although the Act clearly defines certain prerogatives and responsibilities for the states, its underlying premise is the creation of a pro-competitive, deregulatory national policy. With state commissions already directly involved in regulating the ILEC pricing that supports intra-modal broadband competition, the FCC should be comforted that this aspect of its broadband policy will be closely monitored. As the record in this proceeding develops, ACS believes that the Commission will become convinced that sufficient inter-modal competition exists to compel, if not full deregulation of ILEC broadband services, at the very least, a substantial relaxation of federal regulatory requirements. In reaching this decision, the Commission is urged to implement its conclusions in a manner that protects the integrity of that determination and ensures that this policy is consistently applied across the country.

E. Let the Best Not Be the Enemy of the Very Good

ACS believes the best policy in the current circumstances is to allow all broadband service providers to respond directly to market forces and to make investment and pricing decisions based on their individual assessment of their ability to recover costs and earn reasonable margins. However, ACS also acknowledges the continuing national interest, expressed in Section 706 of the 1996 Act as well as in the NPRM, in promoting rapid deployment of broadband capability to *all* Americans, even in areas where the costs of deploying broadband capability today far exceed the revenues that can be recovered for those services – and therefore market forces may be inadequate to stimulate broadband deployment at this time. ACS looks forward to a robust discussion of how the FCC’s policies in the areas of universal service, access charges, UNE pricing, and preemption of state and local barriers to entry, all may contribute to or inhibit achieving this important national goal. In the meanwhile, however, the Commission should take the first step toward market-driven broadband development, and deregulate new broadband offerings, so the vast majority of markets, where demand is adequate to stimulate competitive deployment, can benefit from these capabilities.

V. Conclusion

The ACS LECs share the Commission’s vision that broadband deployment will serve the information needs and contribute enormously to the economic well-being of Americans for many years to come. The most effective way to enable the availability, enhancement and affordable pricing of such services is to allow market forces and market participants to freely operate. The Commission is urged to deregulate ILEC broadband

services. Alternatively, the Commission should relax the regulatory paradigm for new service offerings and, at the very least, limit its oversight of ILEC broadband services to those requirements typically applied to non-dominant carrier offerings.

Respectfully submitted,

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